

GAHC010172012023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/253/2023

ON THE DEATH OF MAHABIR CHAND PARAKH, HIS LEGAL HEIRS-
S/O LATE BHATMAL PARAKH, NEW MAHABIR STORE, MORIGAON TOWN
CHARIALI, P.O. AND P.S.-MORIGAON, DIST-MORIGAON, ASSAM, PIN-
782105

1.1: SMT. CHANCHAL DEVI PARAKH @ CHANCHAL DEVI PAREKH
W/O LATE MAHAVIR CHAND PARAKH @ MAHAVEER CHAND @
MAHAVEER PRASAD.
RESIDENT OF JAIN CHOWK
NOKHA
P.O. AND P.S. NOUKHA
DISTRICT- BIKANER
RAJASTHAN. PIN- 334001.

1.2: SRI MOOL CHAND PARAKH
S/O LATE MAHAVEER CHAND @ MAHAVEER PRASAD.
RESIDENT OF JAIN CHOWK
NOKHA
P.O. AND P.S. NOUKHA
DISTRICT- BIKANER
RAJASTHAN. PIN- 334001.

1.3: SRI LAL CHAND PARAKH
S/O LATE MAHAVEER CHAND @ MAHAVEER PRASAD.
RESIDENT OF JAIN CHOWK
NOKHA
P.O. AND P.S. NOUKHA
DISTRICT- BIKANER
RAJASTHAN. PIN- 334001.

1.4: SMTI. SUNITA MAROTHI
W/O SRI PRADEEP MAROTHI. DAUGHTER OF LATE MAHAVEER CHAND
@ MAHAVEER PRASAD.
RESIDENT OF WILLSON GARDEN

BANGALORE
P.O. AND P.S. BANGALORE.

2: ARUN KUMAR PARAKH
S/O SRI JHANWARLAL PARAKH
NEW MAHABIR STORE
MORIGAON TOWN CHARIALI
P.O. AND P.S.-MORIGAON
DIST-MORIGAON
ASSAM
PIN-78210

VERSUS

SMTI. LAKHI BORKOTOKI AND ANR
W/O LATE KHITIS CHANDRA BORKOTOKI, R/O ROJA GAON, MORIGAON
TOWN WARD NO. 1, P.O. AND P.S.-MORIGAON

2:APURVA BORKOTOKI
S/O LATE KHITISH CHANDRA BORKOTOKI
R/O ROJA GAON
MORIGAON TOWN WARD NO. 1
P.O. AND P.S.-MORIGAO

For the petitioner (s) : Mr. D.C.C. Phukan, Advocate

For the respondent (s) : Mr. B. Kaushik, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

24.06.2024

The instant petition has been filed under Article 227 of the Constitution being aggrieved by the action on the part of the Court of the Munsiff No.1, Morigaon in not accepting the petition so filed under Section 151 of the Code of Civil Procedure, 1908 (for shot, 'the Code') for certain urgent reliefs.

2. Be that as it may, this Court has duly taken note of the petition filed

under Section 151 of the Code which has been enclosed to the instant proceedings as Annexure-5.

3. From a perusal of the said application, it reveals that the relief which has been sought for is parimateria to the relief which has been also sought for in the injunction application which has already been registered as Misc.(J) Case No.52/2023. It has also been submitted by Mr. B. Kaushik, the learned counsel appearing on behalf of the respondents herein that against the injunction application, objection has been duly filed and it is only on account of the pendency of the instant proceedings, no hearing has been taken place in the said injunction application.

4. It has also been brought to the attention of this Court that during the pendency of the instant proceedings, the plaintiff No.1 had expired. Be that as it may, it is seen that the plaintiff No.1 has already been substituted in the instant proceedings vide the order dated 01.05.2024. Under such circumstances, this Court permits the petitioners herein to file an application for substituting themselves against the name of the plaintiff No.1 in Title Suit No.77/2023 and taking into account that in the instant proceedings, the petitioners herein have already been substituted and as such there would have no further requirement for filing any application for setting aside abatement or for that matter, condonation of delay.

5. Mr. D. C. C. Phukan, the learned counsel for the petitioners submits that the said application would be filed by 01.07.2024.

6. Under such circumstances, this Court fixes the matter before the learned Trial Court on 01.07.2024 on which date the petitioners herein would be able to file an application for their substitution against the

plaintiff No.1. Post the substitution being carried out, which needs to be carried out on urgent basis, the learned Trial Court shall proceed with the adjudication of Misc. (J) Case No.52/2023 in accordance with law.

7. In view of the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant